



Center for Community Change

December 16, 1997

Cynthia L. Johnson
Director
Cash Management Policy and Planning Division
Financial Management Service
U.S. Department of the Treasury
Room 420
401 14th Street, S.W.
Washington, DC 20227

RE: 31 CFR Part 208 (Proposed rules for EFT '99)

Dear Ms. Johnson:

These comments on the proposed rules for EFT '99 (31 CFR Part 208) are submitted on behalf of the Center for Community Change (CCC). CCC is a national, not-for-profit organization that provides assistance to grassroots organizations working on housing and community development efforts in low and moderate income and minority communities across the country. We help groups analyze the banking and credit needs in their communities, evaluate the performance of local lending institutions at meeting those needs, and work with lenders to develop programs that are responsive to local needs.

We have been following the development of the EFT '99 regulations with great interest, for we believe that they will have a tremendous impact on low and moderate income people and communities. If it is designed properly, EFT '99 can be a force for good, saving the federal government an estimated \$100 million a year and streamlining its operations, while simultaneously bringing banking services to millions of households that are currently shut out of this country's banking system. If not done properly, however, EFT '99 may simply shift the cost and inconvenience from the federal government to those it is supposed to serve. Our specific comments on the proposed rule follow.

Regulation of Voluntary Accounts

Section 3332(i)(2) of the Debt Collection Improvement Act of 1996 states that, "Regulations under this subsection shall ensure that individuals required under subsection (g) to have an account at a financial institution because of the application of subsection (f)(1) - (A) will have access to such an account at a reasonable cost; and (B) are given the same consumer protections with respect to the account as other account holders at the same financial institution."

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The preamble to the proposed regulations acknowledges that this provision may be interpreted to refer to "all individual recipients who receive their Federal payments by EFT, whether or not they already have an account," or in other words, to individuals who establish accounts in anticipation of EFT '99 and the government's shift over to direct deposit of federal benefits. In the proposed rule, Treasury has elected to adopt a much narrower reading of section 3332(i)(2), applying it only to individuals for whom Treasury establishes a default, or ETA, account. The stated reason is that "Treasury does not believe that there should be widespread regulation of the prices of deposit services voluntarily obtained by recipients in a competitive marketplace."

We urge you to reconsider this approach. Treasury is aware of the relationships that are beginning to be forged between insured depository institutions and check cashers or other fringe banking institutions. Banks are offering special services to these fringe bankers to help them retain their existing customers in the face of EFT '99. Under these arrangements, an account in the bank is set up in the name of the benefit recipient, but to access the funds, the recipient goes to the check casher, where he or she receives a paper check. The recipient pays to have the account, to have the check issued, to have the check cashed, and for any other services (money orders, bill payments, etc.) purchased. Such arrangements, which fail to pass along the benefits of direct deposit to the actual recipient, are costly. They deprive recipients of the consumer protections enjoyed by customers of insured depository institutions. They fly in the face of the goal of EFT '99 to bring people who currently do not have bank accounts into the financial mainstream. Perhaps most significantly, they arise from a situation created by the Treasury Department itself, which is implementing EFT '99 a full two years before default accounts are scheduled to become available. In the absence of a viable alternative (the ETA account), recipients are particularly vulnerable to the marketing efforts of check cashers and other fringe bankers who tell them they must have an account in order to receive their federal benefits.

Treasury has created a market niche for these voluntary accounts. It must regulate them to insure that these recipients are not charged excessive fees and deprived of basic consumer protections. To do otherwise would fail to fulfill the Congressional mandate of EFT '99.

Waivers

Electronic transfer and direct deposit will not work for everyone. Therefore, it is critical that the waiver provisions be structured to allow people to continue to receive a paper check if EFT '99 would be too costly, inconvenient, or undermine their independence.

We support the waivers that are included in the proposed rule. Where moving to direct deposit would create significant physical or geographic barriers, recipients should be eligible for waivers. The same is true for recipients for whom direct deposit would be too costly. These waivers should be retained in the final rule.

We also support the provision in the proposed rule that would allow recipients to self-

certify their eligibility to receive waivers. We urge you to retain this provision in the final rule. It protects recipients from burdensome regulation and intrusion into their personal lives. However, we note that the rule does not restrict individual benefit agencies from instituting certification requirements and procedures on their own. It would be unfortunate if individual agencies were to undermine Treasury's intention to "minimize the hardship associated with conversion from check to EFT," and Treasury should take the necessary steps to insure that this does not happen.

Further, while we support the specific waivers that are enumerated in the proposed rule, we believe that additional waivers should be available for people with language or literacy problems, for those with mental disabilities, and for anyone for whom direct deposit would be too costly, regardless of when they become eligible for federal benefits. As stated in the preamble to the proposed rule, Congress contemplated that people in these circumstances would be eligible for waivers, and this Congressional intent should be carried out. In making this determination, Treasury should consider the impact on recipients of both the initial conversion to direct deposit *and* the recipients' ability to manage direct deposit on an on-going basis, including dealing with disputes, lost ATM cards, replacement PIN numbers, and the like. People who may be able to learn to deal with the technology may have difficulty with other aspects of direct deposit, and should not be forced to accept the new system if they feel uncomfortable with any of its elements. The requirement to receive their federal benefits electronically may force some people who are now able to manage their finances independently into a position of dependence on others with greater language skills, literacy, or mental capacity. This would be an unacceptable outcome, and it can be avoided by broadening the criteria for eligibility for waivers to include literacy and language barriers and mental disability.

On the question of financial hardship, Treasury makes the assumption that if an individual has a bank account, having federal benefits direct deposited into that account will not cause a financial hardship. However, it is impossible to anticipate all of the possible account structures and costs, both now and in the future, and evaluate whether transmitting federal benefits through those accounts may create a financial hardship for individual recipients. Recipients should be the judge of what costs are acceptable, and if they believe the costs are too high, then they should be able to claim the financial hardship waiver.

ETA Accounts

Although this proposed regulation does not address the default, or ETA, accounts directly, Treasury has asked for comment on the characteristics and costs of these accounts. In terms of its goal to use EFT '99 to bring people into the financial mainstream who are currently on the fringes of our banking system, these accounts are the most critical element of the EFT '99 program. If Treasury is to achieve this goal, which we support wholeheartedly, it is necessary to understand and overcome the barriers that have prevented many people from establishing or maintaining bank accounts. Key among these are high opening and minimum balance requirements; high monthly fees, especially for low balance accounts; high fees for bounced checks, ATM usage and other items; lack of convenient branch locations; and discourteous

treatment by bank staff.

If ETA accounts do not address these barriers, or do not allow recipients to handle the full range of their financial transactions, recipients with such accounts will simply withdraw their funds in cash and continue to go to the fringe banking institutions or other alternative systems they use currently. To bring recipients without bank accounts into the financial mainstream, ETA accounts must have the following characteristics:

- Costs must be kept to an absolute minimum. If need be, the federal government should use some of its annual \$100 million in savings to subsidize the fees on ETA accounts.
- Account holders should be allowed a reasonable number of transactions per month (8-10) at no cost. These should enable them to pay their rent or mortgage, utilities (electric, gas, water, phone), medical bills, car note, and the like.
- Recipients should be allowed to deposit paper checks into the account at no cost. People may receive payments other than their federal benefits, and should be able to use their ETA account to handle such payments.
- Recipients should be allowed to transfer funds out of their account by means other than electronic transfer. This means they must be able to write checks or have access to very low cost money orders. The latter would allow recipients to make payments without worrying about bounced check fees. However, many banks charge excessive fees for money orders, perhaps to discourage business from low and moderate income customers. Fees for money orders on ETA accounts must be competitive with check cashers, the Post Office, and other sources.
- ETA account holders must be able to track the activity in their accounts. This means they must receive monthly statements and otherwise check on their account balances. Inquiries should not be limited to ATMs or automated phone systems. Charges for using a teller or talking to a bank representative when questions arise about account activity would be extremely inappropriate. Some reasonable number of personal (as opposed to automated) inquiries per month should be part of the basic ETA account.
- ETA account holders must be protected from foreign ATM fees and network charges.
- ETA accounts must be subject to Regulation E and other consumer protection regulations that generally apply to accounts in insured depository institutions.

In addition, Treasury must insure that banks with which it contracts to provide ETA accounts set up easily accessible and responsive systems for resolving problems. It must be easy for account holders to replace lost ATM cards, change PIN numbers or resolve disputes that may arise. Further, institutions that win the contracts to provide these accounts must not be allowed

to set up systems that prevent ETA account holders from accessing their accounts through the depository institution. In other words, recipients should not be required to go to fringe banking institutions to gain access to their accounts. Finally, people with bank accounts should be able to have ETA accounts, as well. This is particularly important in cases where the costs of the bank account become too high, and recipients want to close their account. The ability to set up an ETA account and insure that funds are flowing into the new account before closing any other bank account will greatly facilitate this transition.

Public Education Campaign

The proposed regulation does not speak to the public education campaign on EFT '99 that Treasury is about to launch. We urge you to make sure that this campaign informs recipients about the full range of options available to them. This includes the option to claim a waiver, the option to allow Treasury to set up an ETA account for them, and the option to do nothing until the ETA accounts become available in January, 2000. This last option is extremely important, for unless people without bank accounts understand that there is no need for immediate action, they may be susceptible to the marketing efforts of high cost, high risk financial service providers that offer undesirable accounts.

It will also be critical for Treasury to involve in the public education campaign organizations that represent and work with those constituencies that will be most affected by EFT '99. These groups can insure that recipients understand the program and their options, and make the best choices for their particular circumstances. A public education campaign that is carefully designed and effectively implemented will be fundamental to insuring that EFT '99 achieves its goals.

Thank you for your attention to these comments.

Sincerely,



Deborah Goldberg
Neighborhood Revitalization Project